

REMARKS

I. Status of the Claims

Reconsideration of the present application is respectfully requested. Claims 1-2 have been amended and remain currently pending. Applicants have included “naked recombinant” in the claims. Support for this amendment is found throughout the specification and in the Examples, specifically in the Example beginning on page 25. No new matter is added by way of these amendments.

II. Rejections under 35 U.S.C. § 102(b)

Claims 1 and 2 stand finally rejected as anticipated under 35 U.S.C. § 102(b) over Ali et al. (Infect Immun 1982, 38(2):610-19) and Murphy et al. (J Clin Microbiol 1986, 24(2):197-202). The Examiner maintains that Ali teaches an infant rat model of administration of attenuated virus for immunization. Additionally, the Examiner maintains that Murphy discloses immunization using inactivated respiratory syncytial virus vaccine. Based on these teachings, the Examiner maintains that the claimed invention is anticipated by the cited references. Applicants traverse the rejection and respectfully request consideration.

Applicants respectfully submit that the claimed invention is novel over both the Ali and Murphy references. As noted above, Applicants have amended the claims to specify the nucleic acid as “naked recombinant” nucleic acid. Applicants submit that Ali’s teachings are limited to the use of virulent and attenuated viruses to invoke an immune response in virus-infected infant rats. Also, Applicants submit that Murphy’s teachings are limited to formalin-inactivated respiratory syncytial virus (RSV). As such, neither Ali nor Murphy teach the use of naked nucleic acid, as both references teach the use of nucleic acids only in the context of viral particles. Furthermore, neither reference teaches the use of recombinant nucleic acids.

Therefore, the presently claimed invention is not anticipated by the cited art. Accordingly, applicants request the rejection be withdrawn.

III. Double Patenting

Claims 1 and 2 stand provisionally rejected under 35 U.S.C. § 101 for double patenting over claims 1-47 of co-pending U.S. patent application serial no. 10/351,630 (*630 application).

Applicants note that the '630 application is no longer pending. Therefore, the rejection is rendered moot. Accordingly, Applicants request that the rejection be withdrawn.

IV. Conclusion

In view of the above amendments and remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue. If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



Sandra S. Lee
Patent Office Reg. No. 51,932

Lisa B. Kole
Patent Office Reg. No. 35,225

Attorney for Applicants
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, NY 10112--4498
(212) 408-2500